

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW JERSEY  
CIVIL ACTION NO 16-MD-2738 (FLW) (LHG)

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IN RE JOHNSON & JOHNSON : TRANSCRIPT OF  
POWDER PRODUCTS MARKETING, : STATUS CONFERENCE  
SALES PRACTICES. : JULY 9, 2018  
----- :

CLARKSON S. FISHER UNITED STATES COURTHOUSE  
402 EAST STATE STREET, TRENTON, NJ 08608

B E F O R E: THE HONORABLE FREDA L. WOLFSON, USDJ

A P P E A R A N C E S:

BEASLEY ALLEN, ESQUIRES  
BY: P. LEIGH O'DELL, ESQUIRE (ALABAMA)  
-and-  
LEVIN PAPANTONIO, ESQUIRES  
BY: CHRISTOPHER V. TISI, ESQUIRE (FLORIDA)  
On behald of the Plaintiffs Steering Committee

DRINKER, BIDDLE & REATH, ESQUIRES  
BY: SUSAN M. SHARKO, ESQUIRE (NEW JERSEY)  
JULIE L. TERSIGNI, ESQUIRE (NEW JERSEY)  
-and-  
SKADDEN, ARPS, SLATE, MEAGHER & FLOM, ESQUIRES  
BY: JOHN H. BEISNER, ESQUIRE (WASHINGTON, D.C.)  
On behalf of Defendant Johnson & Johnson

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BY: ANN THORNTON FIELD, ESQUIRE (PENNSYLVANIA)

On behalf of Defendant Imerys Talc America

A L S O P R E S E N T:

THE MILLER FIRM, LLC

BY: CURTIS HOKE, ESQUIRE (VIRGINIA)

C E R T I F I C A T E

PURSUANT TO TITLE 28, U.S.C., SECTION 753, THE  
FOLLOWING TRANSCRIPT IS CERTIFIED TO BE AN ACCURATE  
TRANSCRIPTION OF MY STENOGRAPHIC NOTES IN THE  
ABOVE-ENTITLED MATTER.

S/Vincent Russoniello  
VINCENT RUSSONIELLO, CCR  
OFFICIAL U.S. COURT REPORTER

1 (In open court.)

2

3 THE DEPUTY CLERK: All rise.

4 JUDGE WOLFSON: Thank you. Everyone may be  
5 seated.

6 I've received a number of submissions from all  
7 of you, one, the agenda which you normally send to me  
8 beforehand, and some other letters that have been sent  
9 with regard to the issue of objecting or appealing  
10 Judge Pisano's rulings with regard to the 30(b)(6) dep  
11 on questioning of the samples and destruction. So I'm  
12 going to deal with all of those things today as well.

13 Actually, let's begin with the issue of the  
14 samples because it really ties together our scheduling  
15 as well and the testing that's being done and what's  
16 being added to the mix. So I would like to deal,  
17 first, perhaps, with the issue that was addressed to  
18 Judge Pisano.

19 In that regard, Judge Pisano had denied the  
20 request by plaintiff for a 30(b)(6) witness to testify  
21 about the maintenance of samples, destruction, loss,  
22 things of that nature, finding it was not going to be  
23 relevant to the issue of general causation. Perhaps,  
24 it would go to an issue of spoliation, but did not  
25 find that there was an issue to go that route at this

1 point anyway.

2 I received your letters, and the first  
3 question, though, that I want to start with for the  
4 plaintiff -- and who is going to be arguing? Is it  
5 you, Ms. O'Dell?

6 MS. O'DELL: Your Honor, I'll take up the  
7 testing and Mr. Tisi will take up the appeal itself.

8 JUDGE WOLFSON: I'm going to address the  
9 appeal first, then we're going to talk about the  
10 testing that's being done and the timing because that  
11 will go to my general schedule.

12 As to the appeal, at this point having read  
13 the various submissions that have been made, it  
14 appears to me that I frankly see that it comes down to  
15 an issue that's principally addressed to Imerys and  
16 not J&J.

17 MR. TISI: No. The example that we used to  
18 illustrate why we believe that that testimony is  
19 testimony that we need in this case was -- the example  
20 we gave was one that relates to concretely Imerys.  
21 But we believe there are gaps in time in the J&J  
22 production of samples as well.

23 JUDGE WOLFSON: Let me just stop for a second,  
24 though.

25 Your principal argument and much of the

1 briefing and as well in your status letter and the  
2 timing is dealing with the fact that you said, with  
3 regard to Imerys, much of the samples that have been  
4 provided had been post-2000, and now these new  
5 additions include time periods for which you had not  
6 had samples from Imerys, which are 1964 to 2001, 2012  
7 to 2014, talking about, as you call it, the early  
8 decades that were missing.

9 MR. TISI: Correct.

10 JUDGE WOLFSON: You do have samples from J&J  
11 from those earlier decades.

12 MR. TISI: Well, we do have samples. But, for  
13 example, Judge, in the 1990s, even though we have many  
14 samples from J&J, they are pretty much clumped in  
15 distinct timeframes.

16 For example, in the 1990s, we have a total of  
17 three samples in that entire decade. In the 2000s, we  
18 have two samples in that entire decade. And so it's  
19 hard for us to believe, just as it was hard for us to  
20 believe with respect to Imerys, that you have a  
21 20-year period of time where you only have five  
22 samples.

23 THE COURT: Have you asked that in written  
24 discovery?

25 MR. TISI: Yes, we have, your Honor.

1 JUDGE WOLFSON: Okay. And what's been the  
2 response?

3 MR. TISI: The response was -- well, the  
4 response from J&J is the same one we got from Imerys.

5 JUDGE WOLFSON: I want to focus on J&J for the  
6 moment and then I'll get to Imerys.

7 MR. TISI: The J&J response was, they put  
8 together a spreadsheet and the spreadsheets were  
9 attached to the orders that were filed, I believe, in  
10 early February, and there has been no supplemental --  
11 as with Imerys there has been no supplemental findings  
12 of additional samples.

13 However, we recently sent J&J some  
14 correspondence that we were able to pull from the  
15 document production where we believe that not only are  
16 there samples -- for example, I think it was 1989, in  
17 this timeframe that I'm talking about here where there  
18 are only five samples for two decades, there were  
19 something like in the neighborhood of 20 samples from  
20 J&J where we see no test results. The samples have  
21 not been produced.

22 And so we asked them to do an investigation  
23 which they indicated that they would be doing. We  
24 didn't raise that with your Honor because it's not  
25 ripe yet because we think it's only fair that they

1 have the opportunity to do that investigation.

2           However, just as there was with Imerys, we  
3 think that there is reason to believe that there are  
4 additional samples out there, and we believe putting a  
5 witness under oath will cause them to either come up  
6 with additional samples or say: We've done a complete  
7 search, this is what it was, and this is why we don't  
8 think that there are any.

9           JUDGE WOLFSON: Are we focusing solely on the  
10 time period from 1990 to 2010 with regard to J&J?

11           MR. TISI: Well, that's the biggest period of  
12 time.

13           JUDGE WOLFSON: Okay. Let me focus on that.  
14 Maybe I can deal with that.

15           Ms. Sharko, if we focus on that 20-year  
16 period, is that something you can deal with?

17           MS. SHARKO: So this is really the first time  
18 I'm hearing this.

19           JUDGE WOLFSON: Well, isn't that appropriate  
20 we have a hearing today, isn't it?

21           MS. SHARKO: Yes.

22           We produced a spreadsheet of over 1,000  
23 samples. That was the last we heard there were any  
24 issues with it until recently, I would say, within the  
25 last week to ten days, whenever it was, Mr. Tisi sent

1 a letter saying: Look at this document. I have these  
2 questions about it. And we said: Thank you. We'll  
3 look into it, and we are.

4 So I don't think that alone in and of itself  
5 is grounds to overturn Judge Pisano's decision as to  
6 samples from 1990 to 2010. First of all, I don't see  
7 the relevancy of that given the latency period and the  
8 dates of diagnoses in all these women.

9 JUDGE WOLFSON: The latency period is what, 20  
10 to 30 years?

11 MR. TISI: Correct, your Honor.

12 JUDGE WOLFSON: So something from 1990 could  
13 certainly fit within that.

14 MR. TISI: Many of these women, for example,  
15 women who were diagnosed earlier, they have been  
16 taking these for 20, 30, 40 years of their lives. So  
17 the timeframe goes back significantly for all of  
18 these.

19 JUDGE WOLFSON: I understand the 2000 to 2010  
20 may not be as great except that, I guess, the question  
21 is: Is it cumulative at some point?

22 Okay. I just want to ask you, Ms. Sharko, at  
23 this point what I don't want to do is create  
24 situations where I might have a limited discovery that  
25 could be permitted and have some issue down the line

1 that you didn't investigate this properly. If I focus  
2 only on that 20-year period, whether it's through an  
3 under-oath declaration -- it doesn't have to be a  
4 deposition from my perspective -- can we deal with  
5 that?

6 MS. SHARKO: So now that I've heard that Mr.  
7 Tisi and the plaintiffs are concerned about this  
8 discrete time period and the number of samples, why  
9 don't I take that question back and see what the  
10 answer is and send a letter to him or a supplemental  
11 letter or a statement under oath --

12 JUDGE WOLFSON: I want it to be a declaration.  
13 The reason they want a deposition is they want  
14 something under oath. If the answers are fairly  
15 simple, a declaration under only is sufficient for me  
16 and you don't have to have someone prepare on a  
17 30(b)(6) a different witness for that.

18 A declaration, that's what I'll direct you to  
19 do.

20 MS. SHARKO: Okay. Thank you.

21 JUDGE WOLFSON: All right. We resolved J&J.  
22 Now, let me talk about Imerys.

23 What else do you want to say, Mr. Tisi, beyond  
24 what's in your papers? I do understand the three  
25 different areas of new discovery that have come about,

1     what you call the Lanzo area, there is the Lanzo box,  
2     the Vermont mine, and some, I guess, grade 25 talc,  
3     whatever , those three different groupings.

4             MR. TISI: I do want to make two points that I  
5     don't think are as clear as I would like them to be.

6             No. 1, we found out about these additional  
7     boxes and materials as a result of putting somebody  
8     under oath. Now, it wasn't the PSC putting somebody  
9     under oath. It was somebody appearing at a trial,  
10    being examined, and that information came out.

11            JUDGE WOLFSON: Well, actually, you didn't do  
12    it. You've indicated you were not involved.

13            MR. TISI: We were not involved in that.  
14    Because somebody was under oath, somebody was in a  
15    witness box, they were asked questions, that we  
16    learned about this, or we probably would have gone  
17    through this entire process without learning about it.  
18    So that's why we believe that it's important to have  
19    somebody under oath to ask those questions.

20            No. 2, I did most of the negotiating, Ms.  
21    O'Dell and I, with both Imerys and J&J. In dealing  
22    with Imerys, it's been very collaborative. But up  
23    until the time in which we actually finalized the  
24    30(b)(6) notices, Imerys was willing to put somebody  
25    in the box to testify on the issue of what we call

1 lost and destroyed samples.

2 It was only when Judge Pisano came down with  
3 his order on the 23rd that we got a call from Mr.  
4 Silver saying: By the way, we are not going to put  
5 somebody under oath because Judge Pisano ruled how he  
6 ruled and we don't think we have to produce somebody  
7 in the same way Johnson & Johnson doesn't have to  
8 produce somebody.

9 And so those two points, I think, are  
10 important to recall.

11 We have been trying to get an inventory of  
12 samples from both J&J and Imerys since September,  
13 since this issue was first raised with your Honor back  
14 in August of last year with respect to preserving all  
15 of these samples for the purpose of this litigation  
16 and the asbestos litigation.

17 I think it's fair to say, and Ms. O'Dell will  
18 go through this, what we've done, but we have been  
19 very aggressive in trying to get our arms around an  
20 inventory that is both representative in terms of  
21 timeframes, in terms of the mines involved, so that we  
22 can have as broad an expert report that encompasses a  
23 fair representation of what's out there. We have to  
24 rely on them to provide it to us.

25 And so we believe that putting somebody under

1 oath, just as Ms. Pierre was under oath in the Lanzo  
2 trial, putting somebody under oath in this MDL will  
3 allow us to assure ourselves that whatever is out  
4 there, reasonably out there, that we are able to  
5 identify.

6 Unless Ms. O'Dell wanted to add anything more  
7 to that, I hope I've answered that question that you  
8 had.

9 JUDGE WOLFSON: I think Mr. Silver wants to  
10 respond.

11 MR. SILVER: Judge, Mr. Tisi's representation  
12 wasn't exactly accurate. I agree it was  
13 collaborative. After that Imerys' position has always  
14 been, if J&J is taking something to Judge Pisano, we  
15 are not going to double the paperload and the workload  
16 on Judge Pisano. We join in on what they are saying  
17 and his rulings will apply both equally to J&J and to  
18 Imerys.

19 But could we back up for a second?

20 JUDGE WOLFSON: But normally what you did do,  
21 and I know with me is, you at least sent a letter  
22 saying: We join in that. And I think it's a good  
23 practice in the future for any disputes you have, that  
24 if you have feel you are taking the same position as  
25 J&J, that you put that in a letter to say that you

1 are.

2 MR. SILVER: Fair enough, your Honor.

3 But could we just back up for one second?

4 JUDGE WOLFSON: Yes.

5 MR. SILVER: Nothing in what the PSC has said  
6 so far today uses the words science, general causation  
7 or Daubert. Do we need all these samples, for  
8 whatever reason, because we want to get an inventory,  
9 or we want to have some gotcha moment on spoliation  
10 down the line or --

11 JUDGE WOLFSON: No, I don't think it's  
12 spoliation. This is how I'm hearing it. You can  
13 ascribe to them whatever motivation you think is  
14 there. But what I want to talk about: Does it have  
15 relevance to what we are doing?

16 I do think it is appropriate to know that we  
17 have the universe of samples out there and that they  
18 are representative samples. And so that has been the  
19 objective from the beginning, which is why everybody  
20 went back to do their searches and exhaustive searches  
21 hopefully.

22 I know J&J is producing some museums and we  
23 had to go through all of that, things in other  
24 countries, and I guess the concern is at this point  
25 because there have been these three more recent

1 discoveries, and maybe now you do have the universe,  
2 that that's what they were entitled to for purposes of  
3 then determining what sampling they wanted to do.  
4 That remains the purpose.

5           So the question is at this point -- and I'll  
6 give the same option to you. But yours is broader.  
7 It's not limited to two decades. I need something  
8 under oath that's going to say that you have  
9 investigated, explored, whatever, all of the possible  
10 sources that could have samples, and you'll either  
11 come up with more, or you'll say: Now, this is it.  
12 We are representing to you that this is it.

13           I want that under oath and you could do it  
14 through a declaration.

15           MR. SILVER: Yes, your Honor.

16           JUDGE WOLFSON: And if in your discovery you  
17 find that there were samples, but that they no longer  
18 exist or are destroyed, then explain that, when the  
19 destruction occurred.

20           If you had samples from the '50s and they were  
21 destroyed in the '50s because you had a two-year  
22 destruction policy, or whatever, fine. I'm sure what  
23 they want to make sure is, you didn't have samples  
24 from the '50s there were destroyed three years ago  
25 when the litigation commenced.

1 MR. SILVER: Judge, again, just for the  
2 record, Imerys started in 1989, and that may be part  
3 of what the issue is.

4 JUDGE WOLFSON: I know there were prior  
5 companies.

6 MR. SILVER: Right. And the Lanzo box is an  
7 example that had samples that went farther back. But  
8 Imerys is a company that only existed as of 1989. But  
9 I understand what your Honor is looking for and we  
10 will go back and --

11 JUDGE WOLFSON: And do the declaration.

12 Now, let me ask both sides. For J&J, because  
13 you do have a circumscribed time period, how quickly  
14 can you get your declaration?

15 MS. SHARKO: I would say given that it's  
16 summer a couple of weeks.

17 JUDGE WOLFSON: Okay. Two weeks.

18 MS. SHARKO: Could we have three and we'll try  
19 to do it faster, please?

20 MR. SILVER: I was going to ask for 30 days,  
21 your Honor, because I want to make sure it's thorough  
22 and complete.

23 MS. SHARKO: I'll take 30 days.

24 THE COURT: I'm sure when Ms. O'Dell gets up  
25 in a moment to talk about her samples she'll say:

1 Look how generous we were to the defendants giving  
2 them 30 days to respond, they should be a little more  
3 generous.

4 Okay. 30 days for both J&J and for Imerys to  
5 submit their written declarations.

6 So to that extent, I am modifying what Judge  
7 Pisano did in this matter. But if the declarations  
8 result in more questions, then I'll deal with whether  
9 a follow-up should be done.

10 Frankly, at this point, because they are going  
11 to be under oath and they have to represent that they  
12 have searched all possible avenues to find these  
13 samples, and will indicate whether in that  
14 investigation if they determine that there were --  
15 excuse me.

16 (Pause.)

17 I do want to note in the declarations, though,  
18 if you determine there had been samples that were in  
19 existence that were destroyed, whether it was done as  
20 a result of a regular destruction policy that was in  
21 place, and what that was or when, if you can come up  
22 with that information.

23 MR. TISI: Your Honor, could I ask a question  
24 as well?

25 JUDGE WOLFSON: Yes.

1           MR. TISI: If they learn in this 30-day period  
2 that there are additional samples out there, and one  
3 of these that Ms. O'Dell is going to be talking about  
4 is our process for trying to get through this, if they  
5 would let us know and make those available.

6           Part of the problem is, for example, even with  
7 the three groups of boxes that we have, we don't have  
8 access to those until mid to late July. So we want to  
9 be as proactive as possible. So if there are some  
10 that are found, that they would bring them in-house  
11 and let us know so that we can start the process of  
12 selecting and dividing them. That would be really  
13 useful.

14          JUDGE WOLFSON: I understand. You are asking  
15 for really a rolling submission.

16          MR. TISI: Well, the final declaration is  
17 30 days. I think that's fine. But if you do learn  
18 something, because what we don't want to do is get the  
19 declaration, let's say --

20          JUDGE WOLFSON: I got it. I think it's what I  
21 just said. If, as they are doing this, they come up  
22 in a week from now and say, We found more samples, you  
23 want them to start making them available.

24          MR. TISI: Yes.

25          JUDGE WOLFSON: I got it. That's what I said.

1 MR. TISI: Thank you.

2 JUDGE WOLFSON: You all have that, those  
3 marching orders. And it's in your interest to do so  
4 because we want to get the sampling testing done.

5 MS. SHARKO: Right. We have no interest in  
6 delaying anything.

7 JUDGE WOLFSON: I know because guess what, Ms.  
8 Sharko? Today I'm giving you a date for experts in a  
9 Daubert hearing.

10 MS. SHARKO: All right. Thank you.

11 JUDGE WOLFSON: It's a very exciting day for  
12 you, I know.

13 Now, let's turn to that, the timing on the  
14 testing.

15 Ms. O'Dell, I think you are going to address  
16 that. Right?

17 MS. O'DELL: Yes.

18 JUDGE WOLFSON: I want to ask you a couple of  
19 questions before you begin on the information that you  
20 provided to me.

21 First of all, I understand that you say there  
22 is only this one Transmission Electron Microscope,  
23 that you call the TEM machine, this million-dollar  
24 machine, so the machine can only do a sample at a  
25 time?

1 MS. O'DELL: That's right, your Honor. There  
2 is one technician. There is one machine. That would  
3 be typical of labs across the country. Typically,  
4 they would not have more than one TEM machine. I'm  
5 not aware of a lab that does. And there's one person  
6 reviewing that particular sample, and it takes a good  
7 number of hours. I think it's 6 to 12 hours per  
8 sample depending on what they find. And if they find  
9 fibers, there is additional time that's required to  
10 adequately document the location of that asbestos  
11 fiber.

12 So that's the issue we are dealing with in  
13 terms of --

14 JUDGE WOLFSON: Let's look at your list. Look  
15 at page 8 of your letter that was filed on July 7th.  
16 This is where you give me the breakdown of all the  
17 timing for testing.

18 MS. O'DELL: Yes, ma'am.

19 JUDGE WOLFSON: So the first one, "log-in  
20 procedure," tell me what takes 2 hours per sample to  
21 log something in.

22 MS. O'DELL: Well, my general understanding is  
23 they photograph the sample. They log it into their  
24 procedure. They begin to prepare it for TEM analysis.

25 JUDGE WOLFSON: Well, that's the next one,

1 "sample preparation: 7 hours per sample."

2 "Log-in," it doesn't make sense to me it's "2  
3 hours." I'm not buying it. But that's not my biggest  
4 number. I'm just going to tell you, I think  
5 everything is being overestimated here.

6 "Sample preparation," I don't know what they  
7 do to prepare it, what that means.

8 And then it's, "TEM grid preparation and  
9 laboratory blanks." That's "5 hours." The other was  
10 "7 hours."

11 I'm not sure what's happening in each of these  
12 stages, what's different in each of these stages,  
13 because it's a lot of time.

14 MS. O'DELL: It is, your Honor. I'm happy to  
15 go through with a description I've been given of  
16 what's done during each of these stages.

17 JUDGE WOLFSON: Okay.

18 MS. O'DELL: Maybe this is helpful, as I go  
19 into this, is these early steps, until they get to the  
20 TEM analysis itself, are steps that can be done by  
21 multiple technicians.

22 So multiple samples are moving through those  
23 steps. It's when it gets to TEM analysis itself that  
24 it really slows down to one person.

25 JUDGE WOLFSON: When you say "it slows down to

1 one person," it could be a different person, though.  
2 Correct?

3 MS. O'DELL: Correct. That's right. Multiple  
4 technicians can do that within the lab. It's just one  
5 machine.

6 So there is a concentration process of the  
7 sample itself when it gets to the preparation. They  
8 take the larger sample. Of course, it's weighed.  
9 Approximately 1-to-2 grams is removed from the  
10 container.

11 It's then placed into a vial. The vial is  
12 then then put into something. I don't know what it  
13 is, your Honor, but I can read it. That's Fisher  
14 Scientific Iso-temp muffle furnace Model so-and-so for  
15 4 hours to remove the organic material.

16 Approximately 25 milligrams is removed from  
17 the muffled talc sample aliquot, then placed into a  
18 labeled Eppendorf micro-centrifuge tube.

19 Approximately 1.2 milliliters of heavy liquid  
20 is then placed in that tube in order to concentrate it  
21 down to the sample that's ultimately tested for TEM.

22 I can go through all of these steps, your  
23 Honor.

24 JUDGE WOLFSON: You'll make Vinnie crazy.

25 I'm trying to just get an idea of what each of

1     these steps really means, because then you have the  
2     "TEM grid preparation and laboratory blanks," which is  
3     another "5 hours."

4             MS. O'DELL: Do you want me to go through  
5     that?

6             JUDGE WOLFSON: Just generally.

7             MS. O'DELL: I want to be accurate. A lot of  
8     this is quite complex.

9             So the filtered sample is then prepared on a  
10    TEM 100 micrometer grid using this filter preparation  
11    protocol. It uses like a washing, and then it's put  
12    on a 7 micrometer filter, and then it's placed on the  
13    grid, which I understand is 7 micrometers. This is a  
14    very delicate process and they say it takes 1.5 hours  
15    generally to do that.

16            So, Your Honor, I understand the focus on  
17    time. Are we accurately estimating the time? I can  
18    go through all these stages. This is from Dr. Longo.  
19    These are the specific steps they go through for the  
20    procedure. There has been no effort to embellish  
21    them, make them longer.

22            JUDGE WOLFSON: I must say, though, reading  
23    this, the "TEM analysis," is "6 to 12 hours."

24            Then it says, "review of data, 2.5 hours per  
25    sample," though it sounds like the TEM analysis was

1 already reviewing it.

2 And then "review of data" again "and  
3 preparation of written report" is another "4 hours."

4 I really think there is some overlap here.  
5 I'll put that aside, but I'm just telling you I think  
6 there is some -- I won't call it fluff, but I do think  
7 that there is too much time that may be duplicative  
8 time that's being given to me. I understand  
9 nonetheless it is time-consuming in some way.

10 So from what I understand, you have 58 new  
11 samples that you've gotten from Imerys?

12 MS. O'DELL: We've actually gotten a total of  
13 216.

14 JUDGE WOLFSON: Right. You picked out 58.

15 MS. O'DELL: We've selected 58. The reason  
16 those samples are important -- if you would like me to  
17 speak to that.

18 JUDGE WOLFSON: No, that's okay. I'll trust  
19 the fact that you've selected ones that you think are  
20 important.

21 My understanding is, you are also still going  
22 through with Dr. Longo reviewing the ones you had  
23 previously selected and that you think there are about  
24 15 of those that you will not be proceeding with and  
25 taking out of the original selection and cutting back

1 some. So if you take that off of the 58 that's 43.

2 There is clearly more and we don't know if  
3 anything that's going to be coming up with the  
4 declarations is going to reveal more samples or not, I  
5 understand that, and whether any of that you would  
6 feel important to testing what's representative or  
7 what's not.

8 So I appreciate that it's not going to be  
9 August 15th, and you knew that coming in here that  
10 wasn't going to be the date to complete. You are  
11 hoping for September 15th. I also know it's going to  
12 be 30 days until you reveal whether there are any  
13 additional samples, too.

14 So you've asked for October 15th. It's going  
15 to be September 30th for you to complete your testing.  
16 The 30th is a Sunday. So it will be October 1st for  
17 the testing. I think on some of this, quote,  
18 reporting analysis they can do better on the timing.

19 MS. O'DELL: We'll do our best to get the  
20 testing accomplished, your Honor.

21 JUDGE WOLFSON: Okay. And especially,  
22 frankly, the agreement we had is your expert report  
23 would be 45 days later, which brings you out to  
24 November 15th. My view is, regardless, your expert is  
25 going to start looking at this.

1           So even if there was perhaps some stragglers  
2     in the testing, reporting some of them the first week  
3     in October, whatever, you could always get that and  
4     add to it. I hear you.

5           So I'll make it November 16th, which is a  
6     Friday, for your expert report.

7           You can have a seat, Ms. O'Dell, unless there  
8     is something else. You look concerned. Is there  
9     something you wanted to add?

10          MS. O'DELL: Thank you, your Honor. No,  
11     that's it.

12          JUDGE WOLFSON: Okay.

13          Now, Ms. Sharko, Daubert. Do you anticipate  
14     that you are going to want to depose their expert  
15     prior to a Daubert hearing?

16          MS. SHARKO: Yes.

17          JUDGE WOLFSON: How much time after receiving  
18     the report would you want to have that deposition  
19     done?

20          Mr. Silver, I'm going to assume you are going  
21     to piggyback on Ms. Sharko on this one.

22          MR. SILVER: Yes, your Honor. Thank you.

23          JUDGE WOLFSON: Okay.

24          MS. SHARKO: I suggest that their experts be  
25     produced for a deposition over a 30-day period.

1 JUDGE WOLFSON: That's fine.

2 MS. SHARKO: And then our expert report at the  
3 end of that 30 days be due 45 to 60 days.

4 JUDGE WOLFSON: Let's do this one at a time.

5 MS. SHARKO: Okay.

6 JUDGE WOLFSON: So their report is the 16th of  
7 November. 30 days would be December 17th, which is a  
8 Monday. So it's to be done by then.

9 You want your reports when?

10 MS. SHARKO: Given the December holidays, I  
11 would say 60 days. Something like that. Early  
12 February.

13 MR. SILVER: Judge, can I just make one  
14 suggestion?

15 JUDGE WOLFSON: Yes.

16 MR. SILVER: You gave 30 days from  
17 November 16th. But the Thanksgiving holidays are in  
18 there and we are losing at least three days out of  
19 that 30. Can we have the extra week?

20 JUDGE WOLFSON: That's up to you. You are the  
21 ones that want to take it and move. Right?

22 MS. SHARKO: Yes. We'll deal with it.

23 JUDGE WOLFSON: That's what I assumed. It's  
24 really just finding the day that works.

25 MS. SHARKO: Exactly.

1 JUDGE WOLFSON: Ms. Sharko wants to forge  
2 ahead.

3 December 17th. So now you are looking at,  
4 what, you are asking for 60 days, February 15th?

5 MS. SHARKO: Yes.

6 JUDGE WOLFSON: When are you going to file  
7 your motion?

8 MS. O'DELL: Your Honor, we would like the  
9 opportunity to depose their experts as well.

10 JUDGE WOLFSON: So we'll do the same 30-day  
11 period for you. So now we're into March 18th.  
12 February only has 28 days. March 18th.

13 MS. SHARKO: Motions filed by March 25th?

14 MS. O'DELL: No, your Honor. We will have  
15 just finished depositions on the 15th. So we would  
16 ask for at least 30 days after the conclusion of those  
17 defense depositions for there to be motions filed.

18 JUDGE WOLFSON: That's because Ms. Sharko is  
19 anticipating she's the only one who is going to be  
20 filing Daubert motions, but I guess that's not going  
21 to be the case.

22 MS. O'DELL: No, your Honor.

23 JUDGE WOLFSON: So I'm looking at April 18th  
24 for the filing of Daubert motions. That's a long way  
25 off.

1           Opposition, how long are you going to want to  
2           oppose each other motions?

3           MS. SHARKO: Two weeks?

4           MS. O'DELL: That's fine, your Honor.

5           JUDGE WOLFSON: I'm fine with that. April  
6           18th. Two weeks later would be May 2nd.

7           Any reply, a week later?

8           MS. SHARKO: Yes.

9           MS. O'DELL: That's fine, your Honor.

10          JUDGE WOLFSON: So that's May 9th.

11          And your hearing in June?

12          MS. SHARKO: May or June. Thank you.

13          JUDGE WOLFSON: I think I'll say June because  
14          I'm going to have to read all your papers and be ready  
15          for you.

16          Just a moment. I have a conference the early  
17          part of June in D.C. I have to look up the dates.

18          I'll give you a date in a moment.

19          (Pause.)

20          THE COURT: I'm in D.C. from the 5th through  
21          the 7th. So let's do it the following week.  
22          June 11th at 10:00 a.m..

23          We also have to decide if you are producing  
24          the witnesses that day because it may not be a one-day  
25          hearing then.

1           The other question is, as we built into the  
2     time period here the depositions, and normally I do  
3     require depositions of experts before holding a  
4     Daubert hearing, but if the witnesses are going to be  
5     produced at the Daubert hearing, do you really want  
6     the deps anyway?

7           MS. SHARKO:   Yes.

8           MS. O'DELL:   Yes, your Honor.

9           THE COURT:   All right.   That's fine.

10          June 11th at 10:00 a.m..

11                 Let's go through the rest of the agenda now.

12                 I understand that you do have one issue you  
13     are still addressing, at least one with Judge Pisano,  
14     on the foreign regulatory bodies, and plaintiffs asked  
15     for those communications and discovery on that to be  
16     able to respond to the submission from the defendants.

17                 You have until Thursday to respond?

18                 MS. O'DELL:   Yes, your Honor.   That's correct.

19                 Your Honor, may I go back just for a second on  
20     the schedule you mentioned?

21                 JUDGE WOLFSON:   Now, that we have it all in  
22     place?

23                 MS. O'DELL:   I just want to put something on  
24     the record.

25                 Thinking about the number of experts that will

1 be necessary to depose in a 30-day period after our  
2 disclosure, that's going to be a very tall task.

3 JUDGE WOLFSON: Let's talk about what experts  
4 you are contemplating then and how many because we  
5 hadn't really addressed that.

6 Go ahead.

7 MS. O'DELL: Your Honor, we are very much in  
8 keeping with the initial disclosure that we gave to  
9 you in terms of epidemiologists, regulatory experts,  
10 cell biologists, there will be geologists,  
11 toxicologists, GYN oncologists, pathologists.

12 JUDGE WOLFSON: Let me ask you this question,  
13 though, Ms. O'Dell: A number of the ones that you are  
14 introducing, how many of these are dependent upon the  
15 testing? Some of them are not.

16 MS. O'DELL: I think that the epidemiologist  
17 would not be as dependent on the testing.

18 But certainly the GYN oncologist, that data  
19 would be relevant to them.

20 The toxicologist would be enormously relevant.

21 The pathologist would be relevant.

22 And then of course we've got some testing  
23 experts themselves, not only the TEM with Dr. Longo --

24 JUDGE WOLFSON: How about your regulatory  
25 expert?

1 MS. O'DELL: I think it would be less  
2 relevant. But there were representations made by  
3 Johnson & Johnson to the Food & Drug Administration  
4 about their products being asbestos-free.

5 We clearly think that was not the case. And  
6 so there will need to have some data upon which to  
7 consider for the purposes of evaluating those  
8 representations.

9 JUDGE WOLFSON: I know you are giving me a  
10 long list of experts. I'm also not sure how many of  
11 those the defendants are going to be challenging in a  
12 Daubert hearing that you want depositions of. But if  
13 you do want all of them, it may be very ambitious to  
14 do it in 30 days.

15 Ms. Sharko.

16 MS. SHARKO: Well, I'm not sure how the  
17 regulatory person is relevant to the Daubert general  
18 causation issues. But putting that aside, Ms. O'Dell  
19 has identified eight areas. So that's eight experts.  
20 We have 30 days.

21 I think all counsel need to work together to  
22 get it done and plaintiffs should be giving us  
23 deposition dates as soon as possible, even before they  
24 identify or serve the expert reports. We can block  
25 out that time and tell the people who are going to be

1 taking the depositions they need to be available and  
2 be flexible and we will do the same for them.

3 MS. O'DELL: Your Honor, we certainly will  
4 endeavor to, one, cooperate; two, to organize the  
5 depositions as expeditiously as possible. But to  
6 suggest that because there are eight areas we are only  
7 going to have eight experts, that's not true. We gave  
8 a list of experts. It won't be all of those.

9 JUDGE WOLFSON: I think you had 30 experts or  
10 more.

11 MS. O'DELL: Some were added and some were  
12 taken away. But there are going to be a number of  
13 experts disclosed. In certain instances there are  
14 going to be multiple experts from a certain  
15 discipline, not to be cumulative, but because we  
16 represent more than -- I don't know what the number  
17 is, 8300, maybe 7800 plaintiffs and this is going to  
18 be an ongoing litigation.

19 So there are needs to have multiple experts  
20 particularly as we anticipate multiple trials in the  
21 future. So to say there are only going to be eight  
22 experts, that's not an accurate depiction. There are  
23 going to be many experts.

24 Your Honor, we will do everything we can to  
25 get it done in 30 days. I was just thinking of how

1 many depositions we are talking about. We're talking  
2 about multiple depositions for each day.

3 Let me put it this way: More than 30 experts,  
4 30 days, you are talking about a lot of depositions  
5 that have to take place in a short period of time.

6 MS. SHARKO: Maybe we need limits on the  
7 number of experts. We are not identifying experts to  
8 staff potential trials on into the future. We are  
9 identifying experts sufficient for your Honor to rule  
10 on the general causation issues in the case. I don't  
11 think we need 30 experts per side to do that.

12 JUDGE WOLFSON: Well, I hope it's not going to  
13 be 30.

14 Look, this is the schedule I want to keep.  
15 We'll be meeting every month anyway over the next few  
16 months as we identify them. I think it will be a good  
17 idea, though, to start blocking out days in that  
18 30-day period for depositions.

19 I'll deal with the issue of whether they are  
20 cumulative, whether they are necessary for general  
21 causation, or if you want to simply hone in on certain  
22 ones for the Daubert hearing at this time reserving a  
23 right on others. We can also do it that way.

24 MS. O'DELL: Okay. Thank you, your Honor.

25 JUDGE WOLFSON: Now, this issue of third-party

1 witnesses in depositions, that's still an open issue,  
2 I take it?

3 MR. TISI: Yes, your Honor. We have served  
4 some. We are getting dates with others.

5 There may be an issue we have to bring to  
6 Judge Pisano with a witness who rejected service and  
7 locked our process server out until he took the  
8 service back, but we'll deal with that with Judge  
9 Pisano expeditiously.

10 Thank you.

11 JUDGE WOLFSON: Thank you.

12 Yes, Ms. Sharko.

13 MS. SHARKO: Could we just please be kept in  
14 the loop on scheduling? We heard nothing about  
15 service or scheduling or any service of process  
16 issues.

17 MR. TISI: Of course.

18 Your Honor, as we've told Ms. Sharko on  
19 numerous occasions, we'll certainly keep them in the  
20 loop. We couldn't schedule a deposition without their  
21 input anyway. So we will definitely do that.

22 JUDGE WOLFSON: Thank you.

23 I think the next area is motions. I guess  
24 what you've got is, there are a number of ones that  
25 you've agreed on where there are dismissals without

1 prejudice. You have given me that list.

2 One question: Are all the pending dismissal  
3 motions that have been filed by individual plaintiffs,  
4 have they now been resolved or agreed upon by between  
5 the parties?

6 MS. O'DELL: I'm only aware of those that are  
7 on the chart that was included in the status report in  
8 the proposed order, your Honor. I'm not aware of  
9 others. I don't know if Ms. Tersigni is.

10 MS. TERSIGNI: Your Honor, we are not aware of  
11 any others other than what's on the chart.

12 JUDGE WOLFSON: You are not aware of any  
13 others at this point?

14 MS. TERSIGNI: Correct.

15 JUDGE WOLFSON: Are there any issues then with  
16 regard to them? Are there other ones that you think  
17 will be coming up that there are issues on?

18 MS. O'DELL: No, your Honor, not from us on  
19 the Rule 41 dismissals.

20 JUDGE WOLFSON: Now, I guess the next question  
21 is with regard to the remand motions, but that's the  
22 Miller firm who is not here today. Correct?

23 Oh, someone is here. Could you come forward.

24 MR. HOKE: Your Honor, Curtis Hoke from The  
25 Miller Firm.

1 JUDGE WOLFSON: So what's the status of these?

2 MR. HOKE: I believe, your Honor, that they  
3 had been briefed. I was under the impression that  
4 they were fully briefed at this time.

5 MR. SILVER: Your Honor, I can shed a little  
6 light. The Miller Firm and my office had a conference  
7 with your law clerk. There was ordered supplemental  
8 briefing.

9 JUDGE WOLFSON: This is on the conspiracy  
10 theory. Correct?

11 MR. SILVER: Yes.

12 JUDGE WOLFSON: That's still in the midst of  
13 being briefed, isn't it?

14 MR. SILVER: Yes.

15 JUDGE WOLFSON: That's not complete.

16 MR. SILVER: Imerys has submitted its brief,  
17 and I believe The Miller Firm's date is -- if it's not  
18 this Friday, it's the following Friday that their  
19 supplemental briefing is due.

20 JUDGE WOLFSON: And then that's it.

21 MR. SILVER: And then the briefing will be  
22 concluded.

23 JUDGE WOLFSON: I think on the conspiracy  
24 theory was it only Illinois and Rhode Island?

25 MR. SILVER: Yes.

1 THE COURT: So you will complete it this week.

2 MR. HOKE: Yes. I'm sorry for that. Yes.

3 JUDGE WOLFSON: All right. Thank you.

4 MR. HOKE: Thank you.

5 JUDGE WOLFSON: Now, defendants have raised an  
6 issue with regard to amended complaints being filed  
7 without consent.

8 Ms. O'Dell.

9 MS. O'DELL: Your Honor, the information that  
10 was placed in the agenda hopefully communicates to  
11 counsel that they should file a motion to amend in the  
12 normal course. We certainly communicated that to  
13 counsel. I think that at this point we've done all we  
14 can to sort of ensure people comply with the rules on  
15 that, that issue.

16 JUDGE WOLFSON: Ms. Tersigni.

17 MS. TERSIGNI: Your Honor, we are putting a  
18 proposal together with the consent order that we'll  
19 send to plaintiffs where we can adjust the cases that  
20 haven't been filed with the motion in one order.

21 We did want to put the warning to counsel in  
22 the agenda going forward that if it's not within the  
23 Rule 15 time period after, they should be filing a  
24 motion and reaching out to us for our consent.

25 JUDGE WOLFSON: But are you looking to do by

1     that order the ones that have been done?

2             MS. TERSIGNI:   Yes.

3             JUDGE WOLFSON:   You are either going to look  
4     to see if you consent to them, and if you don't you  
5     are going to be asking that they be stricken and a  
6     motion to be filed?

7             MS. TERSIGNI:   Correct.

8             JUDGE WOLFSON:   Okay.

9             MS. O'DELL:   Your Honor, we will do our best  
10    to deal with that.

11            I would ask that we be provided a list of the  
12    cases involved and that will help us do the more  
13    archeology in terms of what's been filed, who filed  
14    it, so we can try to help with that process.

15            JUDGE WOLFSON:   Thank you.

16            Then we've got 711 plaintiffs from  
17    multi-plaintiff cases who have not filed short form  
18    complaints.   What are you doing on that?

19            MS. O'DELL:   Well, a couple of things I would  
20    say, your Honor.

21            Mr. Beisner and Mr. Silver and I have had  
22    discussions about a group of plaintiffs that were  
23    transferred into the MDL from Missouri in  
24    multi-plaintiff complaints, some of which reside in  
25    California, New Jersey or Delaware, and there would

1 not be federal subject matter jurisdiction here in the  
2 MDL. So, therefore, short form complaints weren't  
3 filed on those particular plaintiffs because obviously  
4 that would have been inappropriate.

5 So we've worked out an agreement where there  
6 will be essentially a private agreement between the  
7 law firm and the defendants creating a moratorium for  
8 those particular plaintiffs so that they can be  
9 re-filed in the appropriate state court and basically  
10 be taken care of from there.

11 So that's the bulk of those cases we believe  
12 that there haven't been short form complaints. There  
13 are also other groups. For example, if a case was  
14 filed in Missouri with multi-plaintiffs removed,  
15 transferred to the MDL, there may be a motion to  
16 remand pending, so that there is not a short form  
17 complaint filed because they are still disputing the  
18 issue of federal jurisdiction. So that's another  
19 group.

20 And then third, we have gone through the list  
21 that has been provided and there is some  
22 reconciliation issues where short form complaints have  
23 been filed and maybe we just need to go through and  
24 check the docket together.

25 The bottom line is we are focused on this

1 issue and we believe we could get it addressed, so  
2 that the ones that should have short form complaints  
3 filed are doing that.

4 Thank you.

5 JUDGE WOLFSON: And you are working out these  
6 duplicate filed cases as well. Right?

7 MS. O'DELL: Yes, your Honor.

8 JUDGE WOLFSON: I think the rest of your  
9 status letter is really just to tell me what's going  
10 on around the country in your state cases and other  
11 places where matters are pending.

12 I think that's it. What other tissues do you  
13 have today, anything else?

14 Yes, Mr. Silver.

15 MR. SILVER: Hopefully, it's not going to be  
16 an issue, Judge, but I didn't want to be in here on  
17 Monday and then be writing a letter on Wednesday or  
18 Thursday.

19 With regard to Imerys samples, there is  
20 coordination with the asbestos side with the state  
21 court case in California. There is some motion  
22 practice going on there. I'm trying to work with the  
23 PSC counsel there. I'm hoping it's not going to be an  
24 issue, but there might be a letter later in the week  
25 if it can't be resolved.

1 MS. O'DELL: Your Honor, we have been  
2 resolving those issues. I'm not aware of anything  
3 that's arisen that would make that unique, but we'll  
4 try to do that.

5 Your Honor, the only other thing I would like  
6 to say is, bring to you Ms. Parfitt's apologies. She  
7 planned to be here today. She's apologized for not  
8 letting you know in advance. She fell and broke her  
9 foot on Saturday morning, unfortunately, and now is at  
10 the surgeon's office being evaluated for surgery. She  
11 says that she hopes to see you next time.

12 JUDGE WOLFSON: I hope so, too. I hope she  
13 has a speedy recovery, and you can relay that.

14 MS. O'DELL: Thank you.

15 JUDGE WOLFSON: Anything with PCPC?

16 MR. LOCKE: No, your Honor.

17 JUDGE WOLFSON: You're happy campers? You're  
18 good?

19 MR. LOCKE: Not happy, but we're good.

20 JUDGE WOLFSON: Okay.

21 I think our next date on the schedule is  
22 August 23rd. What are we on for, 10:30?

23 MS. SHARKO: Yes.

24 JUDGE WOLFSON: That week I'm going to be  
25 doing a two-week bench trial in a securities matter.

1 You see I'm not having a happy end of summer. So I  
2 told them, though, because it is bench and I don't  
3 have a jury, that I'm going to keep this conference  
4 on. Maybe we could start at 10 o'clock that morning,  
5 so I don't have to take too much time away from the  
6 trial.

7 MS. SHARKO: Sure.

8 MS. O'DELL: That's fine, your Honor.

9 JUDGE WOLFSON: So we'll keep the date,  
10 though, and let's pick a date for September because we  
11 usually try to keep at least one ahead.

12 How about the 26th of September? That's a  
13 Wednesday. Or I can do the 27th, which is a Thursday.

14 MS. SHARKO: Either is going for us.

15 MS. O'DELL: Your Honor, that's fine for us.

16 JUDGE WOLFSON: Which do you prefer, the  
17 Wednesday or the Thursday?

18 MS. O'DELL: Thursday would be better, your  
19 Honor, if you don't mind.

20 JUDGE WOLFSON: Sure. We'll do that one at  
21 10:30, though. That one should be nearing the end of  
22 the sampling, and we'll know where we are, and maybe  
23 we'll talk a little bit more about experts, also  
24 obviously when we come in August.

25 And if for some reason come August 23rd you

1 think there really are no real issues to resolve and  
2 things are going along very well and you don't think  
3 it's necessary, let me know and I'll definitely see  
4 you in September. But there always seems to be  
5 something, though. It's good to come and meet.

6 If there's nothing else, then I'll let you go.  
7 You have some busy times ahead, and thank you, and  
8 everybody enjoy some more of the summer.

9 THE DEPUTY CLERK: All rise.

10 (Proceedings concluded.)  
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C E R T I F I C A T E

I, **Vincent Russoniello**, Official United States Court Reporter and Certified Court Reporter of the State of New Jersey, do hereby certify that the foregoing is a true and accurate transcript of the proceedings as taken stenographically by and before me at the time, place and on the date hereinbefore set forth.

I do further certify that I am neither a relative nor employee nor attorney nor counsel of any of the parties to this action, and that I am neither a relative nor employee of such attorney or counsel, and that I am not financially interested in this action.

S/Vincent Russoniello  
Vincent Russoniello, CCR  
Certificate No. 675

.	<b>23rd</b> [3] - 12:3, 42:22, 43:25	<b>8</b>	<b>allow</b> [1] - 13:3
<b>'50s</b> [3] - 15:20, 15:21, 15:24	<b>25</b> [2] - 11:2, 22:16	<b>8</b> [1] - 20:15	<b>alone</b> [1] - 9:4
<b>0</b>	<b>25th</b> [1] - 28:13	<b>8300</b> [1] - 33:17	<b>ambitious</b> [1] - 32:13
<b>08608</b> [1] - 1:8	<b>26th</b> [1] - 43:12	<b>9</b>	<b>amend</b> [1] - 38:11
<b>1</b>	<b>27th</b> [1] - 43:13	<b>9</b> [1] - 1:5	<b>amended</b> [1] - 38:6
<b>1</b> [1] - 11:6	<b>28</b> [2] - 3:7, 28:12	<b>9th</b> [1] - 29:10	<b>America</b> [1] - 2:11
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